IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6817 OF 2004

Maruti Bhau Arote .. Petitioner

V/s

Ramchandra B. Belatekar & Ors. .. Respondents

Mr.Abhay Pandey i/b M/s M.P. Vashi & Associates for the petitioner.

Mr.Cherag S. Balsara with Mr.Jaydeep Muzumdar and Mr.Ashwin Dave for respondents Nos.1 and 2.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 6TH OCTOBER 2004

P.C. :

1. The petitioner challenges the order dated 29th March 2001 passed in Misc. Application No.10 of 2000 by the Presiding Officer, Labour Court at Mumbai as well as the Award dated 8th September 1999 in Reference No.235 of 1996 passed by the Labour Court, Mumbai.

2. Upon hearing the learned advocates for the parties and on perusal of record, it is revealed that the Award dated 8th September 1999 was passed rejecting the reference and thereby rejecting the request of the petitioner for reinstatement with full back wages and continuity in service with effect from 30th July 1989. In relation to the said Award dismissing the claim of

the petitioner, an application for setting aside of the said Award was filed by the petitioner on 18th February 2000. It was sought to be contended in the said application that he could not attend the proceedings in the said reference on account of failure on the part of his advocate to inform the dates of hearing which he was otherwise assured to be informed by his advocate, and secondly that he was hospitalised and suffering from illness which did not permit him to attend the proceedings. It was also sought to be contended that during the relevant period he was in his home town in Ahmednagar District. The courts below, on the materials on record, disbelieved all the contentions of the petitioner. As regards the claim of illness, it was revealed that the documents produced pertain to the period subsequent to the filing of the application for setting aside of the exparte Award.

3. Even the documents, which have been produced along with the affidavit in reply by the respondent, disclose a copy of the roznama of Criminal Case No.145/S/2000 in the Court of Additional Chief Metropolitan Magistrate, Mazgaon and which discloses appearance of the petitioner on every date of hearing right from June 1999 till May 2000.

4. Mere failure on the part of the advocate for the petitioner, even assuming that the advocate had assured the petitioner, as alleged by him, that he would be informed about the dates of hearing, that by itself cannot enure the benefit of the petitioner to justify his absence when the materials on record disclose that he was very much present in the town and even was attending other court proceedings during the relevant period and that, therefore, the contention of the petitioner that he could not remain present for the ground alleged was rightly disbelieved by the courts below.

5. Apart from all the above mentioned facts, as rightly submitted by the learned advocate for the respondents, there is absolutely no justification disclosed by the petitioner for delay in approaching this court against the order dated 29th March 2001 passed by the Labour Court. The contention that the petitioner was in the home town during the relevant period cannot be a justification for the delay in approaching the court. Once the petitioner was fully aware of the exparte award and if the petitioner genuinely desired to get the Award set aside in terms of

the application filed by him, he should have been vigilant in pursuing the matter, and once the application was dismissed in March 2001, it was necessary for the petitioner to approach this court immediately without any delay.

6. For the reasons stated above, apart from the fact that there is no substance in the merits of the case, even on the point of laches the petition is liable to be rejected. Petition is accordingly dismissed.

(R.M.S. KHANDEPARKAR J.)